FARAD CONTINUATION SHEET.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.89/2006

Office Notes, office Memoranda of Coram appearances, Court's orders or directions and Registrar's order.	Court's or Judge's order

CORAM: B.P. DHARMADHIKARI, J.

DATED : 15.02.2006.

1. Heard Advocate Shri A.S. Chandurkar for petitioner-objector in execution proceedings, and Advocate Shri L.A. Mohta for respondent no.1.

2. Respondent no.1 is executing a decree for possession against the son of petitioner who is respondent no.2 before this Court. In those execution proceedings, the petitioner filed objection under Order 21 Rule 97 of the Code of Civil Procedure pointing out

that her son is not the owner and she herself is the owner in view of relinquishment-deed allegedly executed by present respondent no.1 in her favour in 1995. The Court below has rejected that objection and has granted policed aid to respondent no.1.

3. Advocate Shri chandurkar relied upon provisions of Order 21 Rule 97 of the Code of Civil Procedure to contend that at the moment when objection was raised, the Court below ought to have registered said objection and should have proceeded further in accordance with law to inquire into it. He contends that it has been mechanically rejected and simultaneously police aid also has been granted. He invites attention of this Court to paragraph no.4 of the impugned order dated 6.1.2006 in this respect. He contends that the impugned order therefore is unsustainable.

4. Advocate Shri Mohta for respondent no.1 on the other hand states that property is recorded in the name of respondent no.2 in Municipal record and he

further states that the relinquishment-deed is prima facie a fabricated document and brought into existence only with a view to delay the execution proceedings or in order to defeat the process issued in it. He further contends that the petitioner had already filed Civil Suit No.25/2005 to avoid delivery of possession and sought temporary injunction in it, but the Trial Court on 28.9.2005 rejected that temporary injunction. Thereafter, he preferred M.C.A. No.73/2005 under Order 23 Rule 1 of the Code of Civil Procedure before the Additional District Judge, Akot and said appeal is also dismissed on 1.2.2006. He therefore contends that the only effort of petitioner is to avoid decree passed by the Lower Court and it is her son who is instrumental for all this.

5. Advocate Shri Chandurkar in reply contends that the separate Suit or M.C.A. filed by petitioner cannot be of any consequence in view of Order 21 Rule 101 of the Code of Civil Procedure.

6. Under the circumstances, I find that the objection is being raised by petitioner only in the interest of respondent no.2 at the fag end of execution. She could have filed the said objection even earlier instead of filing the Civil Suit. It is apparent that the petitioner and respondent no.2 are actually hand in glove. Hence, I am not inclined to interfere in the writ jurisdiction. I do not find any perversity in the findings reached by the Court below. The writ petition is therefore dismissed. No costs.

JUDGE

ssw